

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

751 Twinbrook Parkway  
(Next to Meadow Hall Elementary School)  
Rockville, Maryland 20851  
240-777-6600

<http://www.montgomerycountymd.gov/boa/>

**Case No. A-6641**

**APPEAL OF STEPHANIE ORTIZ**

OPINION OF THE BOARD

(Hearing held December 4, 2019)  
(Effective Date of Opinion: December 19, 2019)

Case No. A-6641 is an administrative appeal filed October 23, 2019 by Stephanie Ortiz (the "Appellant"). The Appellant charges error on the part of the Montgomery County Department of Health and Human Services ("DHHS") in its revocation of Short-Term Residential License #BCA-74745. The subject Property is located at 7709 Polara Place in Rockville, Maryland (the "Property").

Pursuant to section 59-7.6.1 of the Zoning Ordinance and section 54-48 of the County Code, the Board held a public hearing on December 4, 2009. The Appellant appeared *pro se*. Associate County Attorney Amy J. DiBiasio represented Montgomery County.

Decisions of the Board:     Administrative appeal **GRANTED**;  
   Short-Term Residential License #BCA-74745  
   **REINSTATED**.

**FINDINGS OF FACT**

**The Board finds by a preponderance of the evidence that:**

1. The Appellant owns the Property located at 7709 Polara Place, Rockville, Maryland 20855.

2. On May 20, 2019, Appellant applied for a short-term residential rental license through DHHS's online application process. See Exhibit 6, pages 2-3 and circle 2. As part of this application, the Appellant certified, by checking boxes next to requirements

for the license that, among other things, "where applicable the following parties were notified — In a single-unit or attached-unit, abutting and confronting neighbors are notified." See Exhibit 6, circle 2-3.

3. On July 1, 2019, DHHS received a letter dated June 27, 2019 from Randy Gale, who resides at 7713 Polara Place. See Exhibit 6, circle 4. In this letter, Mr. Gale challenged the certification the Appellant made in her May 20, 2019 application that she had notified Mr. Gale, the Appellant's immediate abutting neighbor, in advance that she was applying for a short-term residential rental license. See Exhibit 6, circle 5-6. Mr. Gale's letter alleged that he first learned that the Appellant was operating a short-term rental at the Property on June 23, 2019. See Exhibit 6, circle 5-6.

4. In response to Mr. Gale's letter, DHHS sent the Appellant a letter dated July 23, 2019 informing the Appellant that DHHS was in receipt of a challenge to required certifications made on the Appellant's application for a short-term residential rental license. See Exhibit 6, circle 7. In that letter, DHHS informed the Appellant that, for her application, which was approved on June 5, 2019, "[t]he challenge to required certification claims that an abutting neighbor was not notified of the application for licensure." See Exhibit 6, circle 7. DHHS's letter provided the Appellant with 30 days from the date of receipt of the letter to provide evidence to DHHS that the Appellant's certifications were correct, complete and truthful at the time of application. See Exhibit 6, circle 7.

5. Upon receipt of DHHS's letter, the Appellant sent an email dated July 31, 2019 to Clark Beil, Senior Administrator, Licensure and Regulatory Services for DHHS. See Exhibit 6, circle 13. In this email, the Appellant stated "I live in a single family (detached) home and my immediate neighbors have been made aware of my Airbnb rental within my home...I have read the rental license requirements over very carefully and believe that I am in complete compliance with all of the regulations set forth by Montgomery County..." See Exhibit 6, circle 13.

6. On September 23, 2019, DHHS sent the Appellant a letter via certified mail stating that, as of that date, the Appellant "failed to contact this office or provide requested evidence of compliance with required certifications. After investigation of the questions raised by the challenge, the Department finds that one or more of the facts certified by the applicant is false. The Short-Term Residential License # BCA-74745 for the property located at 7709 Polara Place, Rockville, Maryland 20855 is hereby revoked effective September 23, 2019." See Exhibit 6, circle 10.

7. On October 23, 2019, the Appellant timely filed this appeal to the Board of Appeals. See Exhibit 1.

8. Mr. Beil testified that he is a Senior Administrator for the Office of Licensure and Regulatory Services for DHHS. He testified that he is one of two DHHS employees who review applications for short-term residential rental licenses and that his responsibilities include review of the applications for accuracy and approving or denying the applications. Mr. Beil testified that when an application is submitted, the applicant

must open an account with the County, and that the entire process is completed electronically. He testified that the applicant will go to DHHS's website, open their account, and submit the online application. Mr. Beil testified that once the application is complete, the applicant submits payment and his office receives the completed application electronically.

Mr. Beil testified that if all of the attestations on the application are checked as completed, DHHS is required to accept these certifications as fact and approve the short-term residential rental license application. He testified that there is not an official license, and that proof of licensure is the receipt from payment with submission of the application. Mr. Beil testified that DHHS considers payment receipt evidence of licensure. He testified that, unless DHHS receives a complaint about a short-term residential rental license, DHHS does not take any further action until two months prior to the license's expiration, when DHHS reminds the license holder to apply to renew the license.

Mr. Beil testified that a neighbor or any entity can challenge the attestations made in a short-term residential rental license application, and that the challenge must be made within 30 days of approval of the application. He testified that the 30 day time period is considered from the date the application is reviewed, completed, and approved, and that DHHS had arbitrarily set the date of approval of the application as the date from which a challenge would run because the law was not clear as to what date to use. Mr. Beil testified that in this case, based on the challenge received from the Appellant's neighbor, he forwarded the challenge to DHHS's Director for review. He testified that the Director found reason to revoke the Appellant's short-term residential rental license in this case. Mr. Beil testified that an applicant would not necessarily know that the date the application is approved is the date that starts the 30-day challenge period.

Mr. Beil testified that, in this case, the Appellant's application was approved on June 5, 2019 and DHHS received a challenge to the application on July 1, 2019. He testified that it was not clear when the Appellant's application was filed, but that payment for the application was received on May 20, 2019 via credit card. Mr. Beil testified that an applicant can come back to an application and complete it on different dates.

Mr. Beil testified that the short-term residential rental license law has been in effect for 18 months and that there are currently about 250 licenses. He testified that only a handful of license applications were denied, and those were mostly due to payment not being received. Mr. Beil testified that the Appellant's response to the challenge to her application stating that she had notified her neighbors was inadequate. Mr. Beil testified the Appellant did not provide any documentation or any additional evidence of notification, and that DHHS weighed the evidence between the challenger and the Appellant.

Mr. Beil testified that the online application for a short-term residential rental license does not state that an applicant should maintain written evidence of the items they are attesting to and does not clarify how notice is to be provided to neighbors; an applicant simply attests that they have provided notification by checking a box electronically. He testified that by checking the box electronically, the applicant is swearing that they notified

their neighbors of their intent to apply for a short-term residential rental license. Mr. Beil testified that he had received the Appellant's July 31, 2019 email but had not responded to that email.

9. The Appellant testified that her husband has been sick for over year and that her friends suggested she apply to operate an Airbnb in order to earn additional income. She testified that the short-term residential rental license was a new process for her. The Appellant testified that she recalled speaking with her abutting and confronting neighbors about her plans to apply for a short-term residential license when she was in her yard doing yardwork, and that at the time she applied for the license she believed, as she was checking off the certification boxes, that she was in compliance and had informed all her neighbors of her intention to apply for the short-term residential rental license. She testified that she paid for the license application on the day she completed the application, May 20, 2019.

The Appellant testified that, upon her receipt of the July 23, 2019 letter from DHHS informing her of Mr. Gale's challenge to her certification, she both called DHHS and sent an email responding to the challenge within seven days. She testified that her response told DHHS that she had informed her neighbors about her intent to apply for the short-term residential rental license. The Appellant testified that, since receiving the challenge, she has reconsidered her conversation with Mr. Gale, which she had while she was doing yardwork, and that the receipts for the yardwork do not match up with the timeline of when she thought she spoke with Mr. Gale. She testified that, at the time she filled out her application, she recalled having spoken with Mr. Gale about her intent to submit the application.

The Appellant testified that her neighbor, David Pasti, had reached out to Mr. Gale and that was how the Appellant discovered that Mr. Gale was angry that she was operating an Airbnb. She testified that, based on Mr. Pasti's conversation with Mr. Gale, she may have had a miscommunication with Mr. Gale when she told him of her intent to operate an Airbnb. The Appellant testified that she knows she verbally communicated her intent to operate an Airbnb with all of her neighbors. She testified that she does not have any evidence of this communication other than that her other abutting neighbor, Herve Joel Sinb, had confirmed in writing that the Appellant spoke with him about her plans to operate an Airbnb prior to submitting her application for a short-term residential rental license. See Exhibit 1. The Appellant testified that Mr. Gale knows that she was operating an Airbnb and that all of her other neighbors support her operation. See Exhibit 1. She testified that she has reached out to Mr. Gale but he will not answer his door or speak with her.

10. David Pasti testified that he has been the Appellant's neighbor since 1995 and that they all reside on a small cul-de-sac. He testified that the Appellant is an honest person and that she believes she had notified her neighbor, Mr. Gale, of her intent to apply for a short-term residential rental license. Mr. Pasti testified that he reached out to Mr. Gale when he learned of Mr. Gale's challenge and that it was the first time he had spoken to Mr. Gale, who has lived in the neighborhood for three years. He testified that

he sent Mr. Gale a letter because he does not have Mr. Gale's phone number and Mr. Gale does not answer his door. Mr. Pasti testified that he is trying to assist the Appellant, who is in financial distress, and that the short-term residential rental law requires an applicant to notify their neighbors of their intent to apply for a license but does not enable the neighbors to object to the application other than to timely challenge a certification within the application.

11. Paula Messenger testified that she lives directly across the street from Mr. Gale. She reiterated that the County law requires a short-term residential rental license applicant to provide neighbors with a notification of an intent to apply for a license but that there is no requirement that the neighbors consent to the application. Ms. Messenger testified that the Appellant did not receive anything from DHHS for 54 days after she replied to DHHS on July 31, 2019, and that the Appellant thought that reply sufficed and that DHHS would not revoke her license.

### **CONCLUSIONS OF LAW**

1. Section 2A-2(d) of the Montgomery County Code provides that the provisions in Chapter 2A govern appeals and petitions charging error in the grant or denial of any permit or license or from any order of any department or agency of the County government, exclusive of variances and special exceptions, appealable to the County Board of Appeals, as set forth in section 2-112, article V, chapter 2, as amended, or the Montgomery County Zoning Ordinance or any other law, ordinance or regulation providing for an appeal to said board from an adverse governmental action.

2. Section 54-48 of the County Code provides that "[a]ny person aggrieved by an approval, denial, revocation or suspension of a bed and breakfast license or short-term rental license may appeal the decision to the Board of Appeals. The Board of Appeals must hold a hearing on the appeal within 60 days after the notice of appeal has been filed, and must act on the appeal within 30 days after the hearing."

3. Section 54-43, Certification for a License, of the County Code provides:

An application for a bed and breakfast license or short-term residential rental or a license renewal for either use must be signed by the applicant and include the State Sales Tax and Use Registration number. The applicant must certify that:

- (a) the building in which the bed and breakfast or short-term residential rental is located complies with all applicable zoning standards under Chapter 59 of this Code;
- (b) the total number of overnight guests in the short-term residential rental who are 18 years or older is limited to 6, and the total number of overnight guests over 18 years of age per bedroom is limited to 2;
- (c) only habitable rooms will be used by guests;
- (d) smoke detectors in all units and carbon monoxide detectors in all units using natural gas operate as designed;
- (e) sanitation facilities operate as designed;

- (f) the applicant has not been found guilty of a violation of this Chapter in the past 12 months;
- (g) all local taxes and required fees are paid in full;
- (h) the dwelling unit where the bed and breakfast or short-term residential rental is located is the primary residence of the applicant;
- (i) the applicant is the owner or owner-authorized agent of the facility;
- (j) the applicant posted rules and regulations inside the rental, including contact information for a representative designated for emergency purposes;
- (k) the designated representative resides within 15 miles of the unit and be accessible for the entirety of any contract where the primary resident is not present;
- (l) a record of all overnight visitors will be maintained and readily available for inspection;
- (m) where applicable, the following parties were notified:
  - in a single-unit or attached unit, abutting and confronting neighbors,
  - in a multi-unit building, neighbors living across the hall and those that share a ceiling, floor, and walls with the applicant's unit,
  - the municipality in which the residence is located,
  - any applicable home owner association, condominium, housing cooperative, and the owner of the unit or the owner's rental agent, if the applicant is not the owner;
- (n) the application is not prohibited by any Home Owner's Association or condominium document, or a rental lease;
- (o) the common ownership community fees for the dwelling unit are no more than 30 days past due;
- (p) except for persons visiting the primary resident, only registered guests will be allowed on the property; and
- (q) any on-line rental listing will include the short-term residential rental license number.

4. Section 59-7.6.1.C.3 of the Zoning Ordinance provides that any appeal to the Board from an action taken by a department of the County government is to be considered *de novo*. The burden in this case is therefore upon the County to show that Short-Term Residential License #BCA-74745 was properly revoked.

5. Section 54-46, Challenge to Certifications, of the County Code provides:

- (a) A challenge to any required certification made by the applicant may be filed with the Director within 30 days after the application is filed by:
  - (1) a resident or owner of real property located within 300 feet of a licensed or proposed license;
  - (2) the municipality in which the residence is located;
  - (3) any applicable homeowners association, condominium, housing cooperative; or
  - (4) the owner of the unit or the owner's rental agent, if the applicant is not the owner.
- (b) The Director must, within 60 days after receipt of the challenge:
  - (1) provide notice of the challenge to the applicant;
  - (2) provide an opportunity for the applicant to respond to the challenge;
  - (3) investigate the question of fact raised by the challenge; and

(4) revoke or deny the license if the Director finds that one or more facts certified by the applicant is false.

6. Section 54-49 of the County Code states: "[f]or a period of 3 years after a license is revoked, the Director must not issue a bed and breakfast or short-term residential rental license to: (a) the former licensee or a member of the former licensee's household; or (b) any applicant for a license to use the same dwelling unit where the license was revoked."

7. The Board finds, based on the testimony of the Appellant and Mr. Beil, that the Appellant filed her short-term residential rental license to DHHS on May 20, 2019, the date that the application was filed with DHHS and payment was received by DHHS. Pursuant to section 54-46 of the County Code, a challenge to any required certification made by the Appellant may be filed within 30 days after the application is filed. The Board finds that Mr. Gale's challenge was filed with DHHS on July 1, 2019, more than 30 days after the application was filed, and therefore was untimely and should not be considered as grounds to revoke the Appellant's license.

8. Further, even if the Board were to accept DHHS's arbitrary decision to use the date the application is reviewed, completed, and approved, here June 5, 2019, rather than the date the application was filed, as the start of the 30 day challenge period, based on the testimony of the Appellant and her neighbors, Mr. Pasti and Ms. Messenger, as well as the affidavits contained in Appellant's appeal, the Board finds that the Appellant believed she had notified all of her neighbors prior to filing her application. Accordingly, the Board finds that the Appellant's certification pursuant to section 54-43(m) of the County Code was valid at the time that the Appellant made the certification, and that there is no requirement in the County Code that the Appellant provide any evidence of this notification other than her certification. The Board finds the fact that the Appellant's other neighbors were notified of the Appellant's intention to apply for a short-term residential rental license is evidence that the Appellant was conscientious in her efforts to notify her neighbors. Finally, the Board notes that the County Code only requires that the Appellant notify her neighbors of her intent to apply for a short-term residential rental license, but does not require the neighbors to consent to the application.


9. Based on the foregoing, the Board finds that DHHS has not met its burden of demonstrating by a preponderance of the evidence that Short-Term Residential License #BCA-74745 was properly revoked, and that the appeal should be granted.

The appeal in Case A-6641 is **GRANTED**.

Short-Term Residential License #BCA-74745 **REINSTATED**.

On a motion by Chair John H. Pentecost, seconded by Member Mary Gonzales, with Vice Chair Bruce Goldensohn, Member Katherine Freeman, and Member Jon W. Cook in agreement, the Board voted 5 to 0 to grant the appeal, reinstate Short-Term Residential License #BCA-74745, and adopt the following Resolution:

**BE IT RESOLVED** by the Board of Appeals for Montgomery County, Maryland that the opinion stated above be adopted as the Resolution required by law as its decision on the above entitled petition.

  
John H. Pentecost  
Chair, Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 19th day of December, 2019.

  
Barbara Jay  
Executive Director

**NOTE:**

Any request for rehearing or reconsideration must be filed within ten (10) days after the date the Opinion is mailed and entered in the Opinion Book (see Section 2A-10(f) of the County Code).

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure (see Section 2-114 of the County Code).